IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1944 OF 1990

Gulam Reza Mohammed Hassan Mansuri)
of Bombay Inhabitant residing at)
Lokhandwala Chawl, 3rd Floor,)
Bapty Road, now Parsuram Pupala)
Marg, Bombay 400 008.) ..Plaintiff

V/s.

1. P.K. Mohammed,)
2. P.K. Ebrahim,)
3. Abdullah Mohammed,)
4. Abdullah Kadir)
)
All of Bombay Indian Inhabitants)
having address in the care of)
Haji Khan Restaurant in Shops)
Nos.3, 4 and 5 at junction of)
103, Sukhlaji Street, and 257)
Bapty Road now Parsuram Pupala)
Marg, Kamathipura, Bombay 400008.) ..Defendants

Mr.S.H. Patel for Plaintiffs.
Mr.A.S. Urazi i/b.Mr.Urazi A.S. and Law Associates for Defendants.

CORAM : A.S. AGUIAR, J.

DATED : SEPTEMBER 22ND/ 24TH, 2004.

ORAL JUDGMENT :-

1. The suit is filed by the plaintiff for a declaration that the plaintiff is solely entitled to the possession of the suit premises viz. Shops Nos.3,4 and 5 on the ground floor tenement 103, Shuklaji Street and

257 Bapti Road and also for a declaration that the business of Haji Khan Restaurant carried on in the suit premises belongs solely to the plaintiff and for consequential reliefs and injunction.

2. It is the case of the plaintiff that he has been carrying on the restaurant business known as Haji Khan Restaurant since 1935 in suit shop Nos.3, 4 and 5 at Parsuram Pupala Marg, Bombay - 8. That the said premises were rented out by his late father who commenced the said business of Haji Khan Restaurant therein. After the death of his father plaintiff continued the said business. The said hotel is in existence for the last 50 years. Plaintiff claims to be the sole tenant of the said suit shop and claims to be paying rent to the owners for which he possesses rent receipts. Plaintiff states that he had engaged the services of defendants no.1 and 2 in his restaurant business known as Haji Khan Restaurant and they have been working in the hotel since last 20 years. Since the defendants were dedicated and hardworking, the plaintiff took them on as partners in his restaurant business by giving defendants no.1 and 2 fifty per cent share in the said restaurant business; each of them

having 25% share in the said income. Subsequently, the plaintiff claims that he increased the defendants' share in the partnership business by giving them 90% share in the said restaurant business and retaining only 10% for himself. However, the monthly tenancy rights in the suit premises continued in the name of the plaintiff and he retained its possession while allowing the premises to be used for the partnership business. It is the case of the plaintiff that since he was an Iranian national, he had to obtain R.B.I. permission for transferring 90% of the share in his Haji Khan Restaurant business to the defendants who were Indian Nationals. Accordingly, he applied for and obtained the said permission dated 3.2.84 which is at Exhibit-B to the Plaint and Exhibit P-15 in the Evidence. 3. According to the plaintiff, the partnership between plaintiff and defendants continued from 1984 to 1988 when the defendants filed a suit being Suit No.8328/1988 in the City Civil Court falsely alleging that they had paid Rupees Nine Lakhs and acquired the business of Haji Khan Restaurant from the plaintiff. The suit is for a declaration that the Deed of Partnership dated 1.4.83 is sham and a concocted document. Alternatively, they have prayed for dissolution of the partnership and accounts.

The defendant in the said suit (plaintiff herein) took out Notice of Motion for referring the matter to arbitration. The said Motion was dismissed. The defendant, the plaintiff herein then filed an Appeal (A.O.) which was admitted by the High Court. Pending the disposal of the A.O., the plaintiff (defendant in the City Civil Court suit) filed the present suit before this Court. In the meantime, the A.O. was disposed of and the suit was directed to be presented to the proper Court. However, no further steps were taken in the matter by the plaintiff i.e. defendants herein. Plaintiff alleges that in the Motion No.7524/1988 in Suit No.8328/1988 filed in the City Civil Court by the defendants, a consent order was recorded that defendants no.1 and 2 would not interfere with the plaintiff attending the suit premises and the said Motion was accordingly disposed of.

4. The plaintiff denies that defendants' case that the defendant had acquired the restaurant business by paying Rupees Nine lakhs to the plaintiff. It is pointed out that the claim of the defendants is falsified by the Income Tax Returns filed by defendants No.1 and 2 in respect of the said partnership business

of Haji Khan Restaurant as also by the copy of application for registration of the firm of Haji Khan Restaurant for Income Tax purposes bearing signatures of plaintiff and defendants no.1 and 2. The plaintiff has in para 14 averred that defendants no.1 and 2 had given the business for conducting to defendants no.3 and 4 on payment of large deposit and royalty and compensation of Rs.6000/- per month and therefore, defendants no.3 and 4 are acting through defendants no.1 and 2 and defendants No.3 and 4 have no independent rights against the plaintiff. Defendants no.3 and 4, therefore, bound by any decree in favour of the plaintiff against defendants no.1 and 2.

5. The Plaintiff has further averred in the plaint that the Municipal licences and other Government documents are still standing in the plaintiff's name. Plaintiff relies upon the xerox copy of the Municipal licences issued by Municipal Corporation for running Eating House Business which was renewed upto 1987 standing in the name of the plaintiff. The said document is at Exhibit-F.

6. It is the contention of the plaintiff that the

defendant nos. 1 and 2 having disowned partnership with the plaintiff in respect of the Haji Khan Restaurant, are now estopped and debarred from making a false claim therein and plaintiff is entitled to a declaration that there is no partnership between plaintiff and defendants no.1 and 2 in respect of Haji Khan Restaurant as the said defendants no.1 and 2 have sold the partnership and the said defendants have no right to remain in the suit premises alongwith plaintiff who is solely entitled to the possession of the said premises to the exclusion of defendants.

7. The Defendants have filed their written statement contending that the suit business was being carried on by the plaintiff till about the year 1978 when the plaintiff offered the defendants 50% partnership in the suit business on condition that defendants pay to the plaintiff Rs.3 lakhs being the prevailing market rate in respect of the suit hotel and upon payment of this amount, plaintiff and defendants entered into the Deed of Partnership by reason of which plaintiff retained half the share therein and other 50% share was given to the defendants in terms of the said Partnership Agreement dated 5.10.1978 and business was

carried on accordingly in partnership between plaintiff and defendants on 50-50 basis. Thereafter, in the year 1984, the plaintiff expressed his desire to be relieved of his partnership relationship in respect of hotel and asked the defendants to take over his 50% share in the business by paying him Rs.6 lakhs. Accordingly, sometime in the month of December 1983, the suit restaurant was valued for Rs.12 lakhs and the defendants agreed to pay Rs.6 lakhs for the plaintiff's share in the suit business. Pursuant thereto, the defendants paid to the plaintiff sum of Rs.90,000/- by way of cheque drawn on Syndicate Bank, Bombay and the balance amount was to be raised by the defendants by taking loans from sources including one P.K.Yusuf and S.K. Abbas both of Bombay. The plaintiff after receiving the amount of Rs.90,000/- promised to give a valid discharge and disown his rights in the suit hotel and the premises. Pursuant thereto, defendants accompanied by the plaintiff went to the landlord one Raj Karan requesting him to transfer the rent receipt in respect of the suit premises in the name of the defendants. The said landlord demanded a sum of Rs.1.5 lakhs as his transfer fee. Since the defendants found the amount to be exorbitant, they requested the landlord

to defer the transfer of the rent bill to the defendants name till the defendants were in a position to generate requisite funds. However, it was not possible for the defendants to obtain the said funds till about the year 1988, when the defendants again approached the landlord for the transfer. However, the landlord regretted his inability to do so unless consent of the plaintiff was obtained. When the defendants again approached plaintiff for his consent, plaintiff refused to give his consent. It is the contention of the defendants that the plaintiff having received a sum of Rs.9 lakhs in lieu of his share in the said partnership business, the plaintiff has su rrendered his right, title and interest in respect of the suit hotel and the premises and the plaintiff, therefore, cannot now claim to be the owner of the suit business. Alternatively, it is submitted by the defendants that even assuming that the plaintiff continues to be holder of 10% share in the suit hotel as claimed by the plaintiff, 90% share in the said hotel business is that of the defendants and in the absence of the plaintiff making any offer to settle the accounts, the suit as filed is not maintainable. On the basis of the pleadings as aforesaid, this Court has framed issues dated 24.1.2001 which read as follows :-

(a) Whether the plaintiff proves that he is the sole proprietor of the Hotel known as Haji Khan Restaurant and as such entitled to exclusive possession of the suit premises viz.Shop No.3, 4 and 5 on the Ground floor of the Junction of 103, Shuklaji Street and 237 Bapty Road (Now known as Parsuram Pupala Marg) Kamathipura, Bombay-400 008?

(b) Whether the plaintiff proves that the Defendants who were partners of the Hotel Business under the Deed of Partnership dated 3rd April 1984 have disowned the Partnership and as such the plaintiff has become sole Owner of the Hotel Business and the suit premises?

(c) Whether the plaintiff is entitled for a permanent injunction restraining the Defendants from entering into the suit premises viz.Haji Khan Restaurant, situated at Ship No.3, 4 and 5 on the Ground floor at the Junction of 103 Shuklaji Street and 237 Bapty Road now known as Parshuram Pupale Marg, Kamatipura, Mumbai 400

008?

(d) Whether the plaintiff proves that the Defendants are liable to pay the sum of Rs.90,000/- being the compensation at the rate of Rs.6000/- p.m. from 9.2.89 till the date of filing of the suit?

(e) Whether the Defendants prove that they have purchased the Hotel business viz.Haji Khan Restaurant from the plaintiff on payment of Rs.9,00,000/- and the Deed of Partnership dated 3.4.84 is sham, bogus and colourable document and not binding upon them?

(f) Whether the Plaintiff is entitled to ask for a declaration as prayed for?

(g) What order?

. Before commencement of the trial, by consent, the following issue was framed as an additional issue being Issue no.8 :-

(h) Whether in case the partnership is subsisting,

would the suit of the plaintiff be maintainable?

8. By the said order dated 8.4.2004 framing the additional issue, liberty was granted to the plaintiff to lead any additional evidence that the plaintiff may desire to lead before the defendants commenced his evidence. However, no further evidence was led by the plaintiff on the additional issue. After completion of the evidence, the defendants filed an application for rejecting the plaint on admitted facts. The additional issue it appears was framed in view of the defendants application dated 19.3.2004. Reference may be made to the contents of the said application pointing out the facts of the partnership admitted by the plaintiff in his cross-examination which took place before the commission on 26.2.2004 and 8.3.2004. In his said cross-examination, the son of the plaintiff who is the C.A. of his father has admitted as follows :-

(a) It is true that in 1984 when the partnership was constituted in respect of the suit firm my father share was reduced to 10% and the defendant share was 90%. Prior to that my

father share in the partnership was 50% and that of the defendants was 25% each. Today I do not have in my possession any document to show that the Defendants are the employees of my father till today. The High Court suit has been filed on 21st June 1990. At the time when the suit was filed 10 years prior thereto the share of the Defendants' was 50%.

(b) Attention of the witness is drawn to Exhibit P-9 after perusing the document the witness admits that the licence stands in the name of the three partners.

(c) It is true that the eating licence issued by the B.M.C. bearing E 1773 of 1980 has been issued by the B.M.C. prior to the partnership agreement dated 3.4.1984.

(d) (Attention of the witness is drawn to the Agreement of 1978) This document has been signed by my father. I do not have the original document in my possession. Mr.Uraizee produces his document which is taken on file marked as

Exhibit ’2’.

(e) It is true that from 1978 till 1984 my father share in the partnership was fifty percent and that of the defendants was 25% each.

(f) It is true that because of the fact that they were shown as partners in the agreement their names were also shown as partners in the Municipal Licence, Gumasta Licence, Police Licence and Health Licence.

(g) Till date my father has not made any application to remove the names from the record where they had been reflected as partners.

(h) The contents of clause 5 of the partnership agreement Exhibit ’2’ is correct.

(m) I do not have any documents to show that the partnership agreement of 1978 was dissolved and a new partnership agreement was drawn up in 1984.

(n) The contents of clause & of the partnership deed of October 1978 are correct.

(o) The attention of the witness is drawn to Exhibit P5 extract of Registration of firm the contents of the clause pertaining to the duration firm are correct.

(r) It is true that neither my father nor the defendants have given any notice of dissolution of the partnership firm.

(s) We have not entered into any agreement to dissolve the partnership firm.

(t) We have not communicated to any authorities namely viz. register of firms income tax authorities or the Municipality that the firm has dissolved.

(u) We have not issued any public notice with regard to the dissolution of the firm.

9. At the trial the, plaintiff has examined his son

PW-1 Fatulla Gulam Reza Mansuri who holds a Power of Attorney from the plaintiff while the defendant has examined defendant no.2 P.K.Ibrahim as defence witness no.1 (DW-1). In his cross-examination, DW-1 has stated that he is not going to examine any other witness and that he is deposing on his behalf as well as on behalf of defendant no.1. In his evidence in chief, defendant no.2 had stated that he is not going to lead any evidence on issue no.(e) and he was stating so on legal advise. Even at the time of arguments, learned Advocate for defendants made it clear that he was restricting his defence only on the question of maintainability of the suit and that is why the defendants have led no evidence to prove the defendant's case. Thus, it is clear that the suit will have to be decided on a pure question of law viz. as to the maintainability of the suit and therefore, that would be the only issue which will have to be decided in the present suit. In the event of the Court holding that the suit is maintainable, then it goes without saying, that all other issues will have to be decided in favour of the plaintiff. It is on this specific understanding that learned Advocate for the defendants has proceeded to argue the Defendants' case and restricted himself to the issue of maintainability

of the suit.

10. Since the defendants are restricting themselves to the issue of maintainability of the suit, the defendants have led no evidence to prove the defendants case that they have purchased suit business of Haji Khan Restaurant from the plaintiff. It is, therefore, for the plaintiff to establish that although he admittedly runs the hotel business Haji Khan Restaurant in partnership with the defendants, he retains the title to the suit premises in shop nos.3 and 4 to himself and did not part with possession of the suit premises to the defendants and/or partnership firm and that at all times, he continued to be in possession of the premises and the tenancy rights in respect thereof vested and continued to vest in him. In support of his claim, plaintiff has referred to and relied fact that the tenancy of the hotel premises stands in the name of plaintiff’s late father Mohammed Hasan Mansuri since 1935; that the tenancy of the suit premises which stand in the plaintiff’s father name now vest in the plaintiff and that the plaintiff has been paying rent in respect of the suit premises and the rent receipts have been issued in the name of plaintiff (At Exhibit P-3 is rent

receipt dated 2.7.99) The said rent receipt has been Exhibited by consent. On the other hand, it is pointed out that the defendants admit that the rent receipt has not been transferred into their names despite their application to the landlord for transferring the rent receipt in their names, pursuant to their alleged purchase of the hotel business from the plaintiff for a sum of Rs.9 lakhs. As things stand, therefore, the tenancy in respect of the hotel premises is and continuous to stand in the name of the plaintiff. So far as the hotel business is concerned, the plaintiff has admitted that he took the defendants no.2 and 3 as partners with 50% share in his business as is manifest from the Partnership Agreement dated 5.10.1978. The Agreement at Exhibit 2 has been produced by the defendants. Subsequently in the year 1984, the plaintiff entered into another Partnership Agreement with the defendants relinquishing his entire business share to the extent of 90% share in the said partnership business in favour of defendants no.1 and 2 retaining only 10% for himself. This has been deposed to by the plaintiff himself in his evidence. The agreement is produced by the plaintiffs and referred to and relied upon by him. It will be seen from both these agreements

that the tenancy of the suit premises which was in the name of the plaintiff's father continues with the plaintiff as monthly tenant.

11. It is the submission of the learned Advocate for the defendants that the suit is not maintainable in view of the admitted position that there is a partnership subsisting between the plaintiff and the defendants no.1 and 2 and therefore, the suit should have been filed for dissolution of partnership and accounts and that the prayer for declaration that the plaintiff is in possession as tenant which is the basis of title, is inconsistent with the reliefs prayed for in a partnership suit. It may here be pointed out that the plaintiff has dropped defendants no.3 and 4 for the reasons which he has not disclosed. In this connection, it is pointed out by the learned Advocate for the plaintiff that a suit for dissolution and accounts was filed by the defendants in the City Civil Court being Suit No.8328/1988 wherein they sought the reliefs of dissolution and accounts and alternatively, also for a declaration that the purported deed of partnership dated 1.4.1983 is sham and bogus. In the said suit, the defendant i.e. the plaintiff herein, Gulam Reza

Mohammed Hassan Mansuri, has taken out Notice of Motion No.6768/88 under Section 34 of the Arbitration Act for having the matter referred to Arbitration. However, the said Motion came to be dismissed in view of the submissions made by the plaintiffs, defendants herein, that there was in fact no partnership in existence. It was pending this suit in City Civil Court, the plaintiff has filed the present suit for declaration of his title as tenant in the said premises and therefore, it is his contention that it was not necessary for the plaintiff to have filed any suit for dissolution of partnership and accounts although the plaintiff admits the two Partnership Agreements of 1978 and 1984 Exhibits P-2 and P-4 respectively. From the said order dismissing Motion, the plaintiff filed an appeal (A.O.) in this Court which was allowed. By order dated 26.6.1992, this Court held that the suit is beyond the pecuniary jurisdiction of the City Civil Court and directed return of the plaint for presenting to the proper Court. However, thereafter, plaintiffs i.e. present defendants took no steps for filing the suit in this Court. Thus, there is no suit pending for dissolution of the partnership and accounts. The question, therefore, arises whether the plaintiff’s title to the shop

premises can be decided in this suit when the partnership admittedly is still subsisting.

12. Both the Partnership Agreements of 1978 as well as 1984 state that the tenancy of the hotel premises will continue with the plaintiff. The defendants in their written statement claims to have purchased not only the hotel business but even the tenancy rights in the suit premises leaving only a token sum of Rs.150/- per month to be paid towards the plaintiff's share in the partnership. However, the Defendants have given up their case that the hotel premises were purchased by them but not transferred in their name due to the illegal demand of the landlord and subsequent refusal on the part of the plaintiff to give his consent to the transfer of the hotel premises to their names. In view thereof, the additional issue on the question of maintainability of the suit has been framed requiring the Court to first decide whether the Suit is maintainable in the absence of any relief claimed by the plaintiff for dissolution and accounts of the partnership firm which the plaintiff claim is still in existence. Since the defendants have restricted their defence as to the question of maintainability of the

suit, the defendants have waived their right to lead evidence on the other issues including Issue No.(e) regarding purchase of the premises.

13. The plaintiff’s case is that the tenancy of the hotel premises remained with plaintiff and that the 10% share was retained by him only in respect of the partnership business. It is the plaintiff’s case the right of the plaintiff in the hotel premises did not form part of the partnership business. From the averments and prayer in the plaint, it is clear that the plaintiff’s case is that the hotel premises are his personal assets and not of the partnership firm and there is no dispute about the partnership business and therefore, his suit is restricted to recovery of possession of the premises which he claim does not form part of the partnership assets. Hence, there is no need for the plaintiff to have any suit filed for dissolution and accounts.

14. It is further submitted by the plaintiffs that the defendants themselves have come out with the case that they have purchased the partnership business and pursuant thereto, the plaintiff has relinquished his

tenancy rights in the suit premises in favour of the defendants. Subsequent thereto, they approached the owner of the premises for transfer of rent receipt in the name of the defendants which request of the defendants was not granted. It is the plaintiff's contention that since it is the defendant's case in written statement that they have purchased the business and premises the plaintiff is constrained to file the suit for declaration that he is sole owner of and in possession of the premises and therefore, it was not necessary to file the suit for dissolution of partnership and accounts. In other words, since the hotel is a running business of the partnership firm, the plaintiff, as owner of the tenancy in respect of the suit shops is entitled to a declaration of his exclusive right to the tenancy of the suit premises without asking for dissolution of the partnership firm. It is submitted by the plaintiffs that the defendants in their written statement claim that there is no partnership in existence as they have purchased the plaintiff's share in the hotel business and premises and that the document dated 5.4.88 is a sham and bogus document, and since the defendants themselves have denied the partnership, there is no question of the plaintiff filing a suit for the

dissolution of a non-existing partnership. Furthermore, it is pointed out that even in the suit filed by the defendants herein against present plaintiff in the City Civil Court being Suit No.8328/88, the defendants had prayed for a declaration that the partnership deed dated 1.4.83 is sham and bogus. It is finally contended by the plaintiff that he has lead evidence to substantiate his claim and he has also been cross-examined but nothing has been brought out in his cross-examination to dispute his title to the tenancy of the suit shop. On the other hand, it is pointed out that the defendants have not led any evidence and therefore, failed to prove their case of having purchased the shop and hence, plaintiff is entitled to the reliefs claimed by him.

15. It must once again be stated that the defendants have given up the defences raised by them in their written statement except the issue of maintainability of the suit which has been raised at the start of the trial. Although the defendants have alleged that the Partnership Deed dated 1.4.1983 is sham and bogus, they have nevertheless relied upon earlier Partnership Agreement dated 5.10.1978, Exhibit ’P-2’ by which the plaintiff for the first time took the defendants no.1

and 2 into his partnership business by giving them 50% share in the hotel business. This is clear from clauses 5 and 6 of the said Partnership Agreement dated 5.10.1978, Exhibit-2. This Partnership Deed dated 5.10.1978 has been brought on record in the cross-examination of plaintiff (PW-1) by the defendants. The same has also been proved and is on record as Exhibit-2. So far as Partnership Deed dated 1.4.1983 is concerned, the defendants had in their suit filed in the City Civil Court being Suit No.8328/88 contended that the said Partnership Deed was sham and bogus as it is their case that they had purchased the hotel business from the plaintiff. However, the plaintiff in the present suit has referred to this Partnership Agreement dated 1st April, 1983 and relied upon it and produced it in his evidence at Exhibit P-4 to substantiate his case that there was in fact a partnership existing between himself and the defendants.

16. Although the defendants themselves have questioned this document in view of the stand taken by them earlier that they have purchased the suit premises, it is necessary to look to the averments in the plaint to find out what is the exact nature of the case of the

plaintiff. It is on the basis of the averments in the plaint that the reliefs claimed by the plaintiff have to be considered and granted. The plaintiff has clearly in his plaint as well as in evidence admitted the partnership. When shown the Agreement of 1978 Exhibit-2 the plaintiff's son C.A. PW-1 who was in the box admitted that the document was signed by his father, the plaintiff. He has further admitted in his cross-examination "It is true that from 1978 till 1984 my father's share in the partnership was fifty percent and that of the defendants was 25% each". In paras 9 and 10, PW-1 states as follows :-

9. "It is true that because of the fact that they were shown as partners in the agreement their names were also shown as partners in the Municipal Licence, Gumasta Licence, Police Licence & Health Licence."

10. "Till date my father has not made any application to remove the names from the record where they had been reflected as partners."

17. PW-1 has also admitted that clause 5 of

Partnership Agreement Exhibit-2 is correct. In para 18 of his evidence, PW-1 has stated "It is true that in the plaint filed by my father, he has not relied upon any extract of registration of the partnership firm in 1984 nor relied upon the extract of registration Exhibit 'P-5' ". The said Exhibit P-5 which has been brought on record by PW-1, shows the names of defendants as partners in the said firm as on 13.7.1984.

18. On the other hand, learned Advocate for plaintiffs refers to the cross-examination of defendant no.2 Ibrahim who in para 14 has stated as follows :-

> " 14. "According to me there is no Partnership existing between us that is Defendants and Plaintiff."

19. The denial of the partnership by defendants is not material for deciding the plaintiff's claim. Irrespective of what the defendants say, it is to the averments made by the plaintiff in his plaint that the Court should look to for deciding whether the reliefs claimed by the plaintiff can be granted or not. The plaintiff's case must stand on its own feet and cannot

be based on any infirmity in the defendants case. As things stand, there is no suit filed for dissolution of the partnership which the plaintiff claims to be in existence. Unless the partnership is dissolved, the rights of the partners to the assets of the firm cannot be decided. Whether the suit premises form a part of the partnership business may be under dispute, but the fact remains that plaintiff on his own showing is a partner, albeit holding a nominal share of 10% only in the partnership business and continues as partner in the said business of Haji Khan Restaurant which is a running business. The hotel business is being run by the partnership firm which is in existence in premises the tenancy of which the plaintiff claims belong to him exclusively. Tenancy rights in the premises may vest in the plaintiff to the exclusion of the other partners but it cannot be to the exclusion of the partnership business itself which is run in the premises. Since the hotel business is a going concern and the partnership is admittedly in existence and since there are disputes between the partners, the only remedy available to the plaintiff would be to file a suit for dissolution of the partnership and for taking accounts and thereafter, deciding rights of the partners to the various assets or

liabilities in the firm. The Suit for a declaration of the plaintiffs exclusive rights to the tenancy of the hotel premises is ex-facie inconsistent with the existence of the partnership which is admitted by the plaintiff himself. Therefore, the suit for declaration of the plaintiff's rights to the hotel premises to the exclusion of the other partners is not maintainable and in view thereof, the suit is dismissed as not maintainable.

20. It must here be pointed out that the plaintiff had applied for injunction and Receiver and Court Receiver was appointed by order dated 8.8.90. The defendants were appointed as Agents of the Court Receiver without security but on payment of compensation to be fixed by the Court Receiver. The plaintiff has moved this Court again for enhancement of the royalty fixed by the Court Receiver at Rs.2577/- per month to Rs.16,000/- per month. By order dated 28.6.1993, the Court Receiver was directed to call for bids for running the restaurant on monthly royalty from the third parties and the defendants were permitted to withdraw the sum of Rs.2000/- per month and the balance was directed to be invested by the Court Receiver till the disposal of

suit. Defendants filed an S.L.P. before the Supreme Court which permitted the respondents, plaintiff herein, to withdraw Rs.2500/- per month instead of Rs.2000/- per month. The plaintiff state that they have so far not withdrawn any money on account of royalty from the amount deposited in Court.

21. Since the suit is dismissed and disposed of, the Court Receiver to stand discharged subject to the Court Receiver submitting accounts with liberty to the Court Receiver to apply for necessary directions from the Court, as and when required.

22. On the application of the learned Advocate for plaintiff, order stayed for a period of six weeks.

. Certified copy expedited.

(A.S. AGUIAR, J.)